

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of Request for Review	)	
By Corr Wireless Communications, LLC	)	CC Docket 96-45
of Decision of Universal Service Administrator	)	WC Docket 05-337

Attention: Chief, Wireline Competition Bureau

**APPEAL FROM DECISION OF ADMINISTRATOR  
OF HIGH COST UNIVERSAL SERVICE FUND**

Corr Wireless Communications, LLC ("Corr") hereby appeals to the Commission to review an erroneous interpretation of the Commission's Interim Cap policy by the Universal Service Administration Corporation (USAC or the Administrator). The appeal is submitted pursuant to the procedures set forth in 47 C.F.R. Sections 54.719 *et seq.* As will be set forth below, the Administrator is not including the high cost support funds disclaimed by ALLTEL and Verizon in connection with their merger last year in the pool of funds available for distribution under the interim cap. This action exacerbates the already devastating effect of the cap on certain carriers such as Corr.

Background. Under the formula adopted by the Commission in the *Interim Cap Order*<sup>1</sup>, the capped amount is the level of high cost support available to ETCs in any given state as of March 2008 multiplied by twelve. *Interim Cap Order* at Para. 38. This amount is a fixed number and establishes the pool of funds for high cost support which are be available to eligible ETCs while the cap is in place. In Corr's home state of Alabama, for example, the capped amount is \$4,555, 470. The Commission stressed in the *Interim Cap Order* that the cap does not

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<sup>1</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (rel. May 1, 2008) ("*Interim Cap Order*")

restrict the number of ETCs that may receive support from the capped pool. Indeed, in the same Order the Commission approved ETC designations for a number of new carriers with the effect that more carriers were going to have to divide up a smaller amount of funds:

Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. As described in more detail in Appendix B, we find that the applicants have met the Commission's requirements for designation. We also amend an ETC designation as described in Appendix C. These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.

*Interim Cap Order* at Para. 39. The cap formula is therefore a simple one: a fixed sum has been set for each state, and that sum does not vary with the number of eligible recipients.

Effect of the Cap on Certain States. One might imagine that the imposition of a cap – particularly a so-called temporary one like we have here – would cause only a minor and fleeting shortfall in the funds necessary for carriers to meet their obligations. This is not the case. Because the FCC added new CETCs to the recipient pool in some states at the same time that it capped the funds available in those states, a disastrous shortfall has occurred in the funds available to CETCs to carry out their obligations. Corr's situation is a perfect example.

In about seven states, it is the FCC rather than the state public service commissions who makes the determination that a particular carrier is eligible for ETC funding in a given territory.<sup>2</sup> Alabama is one such state. Several years ago, a number of carriers duly filed requests to be deemed ETCs in Alabama and the other states within the FCC's purview, supplying all necessary information for the Commission to make that determination. Although there were no grounds to deny these applications, the FCC simply sat on them for as much as three or four years. This action alone had the effect of denying otherwise eligible carriers the funds needed to provide

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<sup>2</sup> 47 U.S.C. Section 214(e)(6).

services in high cost areas during those years. Once the cap was imposed, however, the process suddenly became a zero-sum game: the addition of any new distributees to the group sharing from the fund necessarily reduced the amount that any of the sharing carriers would receive. Because one of the CETCs designated by the Commission in that order happened to have a large number of lines in Alabama, the effect was to immediately reduce Corr's share of the available capped funds by more than 50%.

This crippling blow was a predictable consequence of the FCC delaying designation of ETCs in the states over which it had jurisdiction for so many years. Had the FCC acted in an even remotely timely fashion (as did state commissions in other states), the newly designated carriers would have long ago qualified for USF funding, and the funds necessary to support them would have already been included in the pool when the FCC capped it. By delaying its designation until the cap was imposed, the FCC effectively made it impossible for any of the participating carriers in these few states like Alabama to recover anywhere near their needed level of support. Although the effect was to amputate these carriers' support at the knees, thus slowly bleeding them to death, the FCC did not discuss this consequence at all in the *Interim Cap Order* and does not seem to have even considered it.

In other states where new ETCs had been routinely designated in a timely fashion, the effect of the cap was less extreme because most of the potential sharers in the capped pool had already come into the pool and their needs were therefore being met at the capped level. In Alabama and the other states under the FCC's ETC-designating jurisdiction, the cap caused everybody to suffer a massive shortfall from day one. This is the height of arbitrary and capricious action, and it seems to have been done by the FCC with no consideration of how serious the consequences would be.

The destructive effect of this confluence of actions cannot be overstated. In 2008, Corr qualified for a high cost support funding level of \$3.8 million which was presumptively the amount it needs to carry out its obligations to provide service to high cost areas. Under the capped amount, it will receive \$1.8 million, a reduction of 57%. Clearly, any relief available from the freeing up of high cost support funds in these states is urgently needed.

Treatment of the Verizon/ALLTEL Funds. As set forth above, under the stated cap formula, the number of participants in the pool does not affect the overall size of the fixed pool; it only affects how many ways the pool must be divided. This means that when new ETCs enter the pool, there are more participants, but the necessary corollary is that when existing participants *leave* the pool, the number of participants goes down and each participant's share should go up. This is precisely what should have happened when Verizon/ALLTEL renounced its claim on any high cost support funds. In a November 3, 2008 ex parte submission by Verizon Wireless in connection with the proposed merger of Verizon and ALLTEL, Verizon committed to phase out high cost support over a five year period.<sup>3</sup> The initial reduction of 20% was to occur no later than December 31, 2008. This means that at least \$67 million dollars of high cost support which had been going to ALLTEL in March, 2008 was now available to be distributed to other carriers, plus whatever high cost support Verizon itself may have been getting. These funds should have been available to other ETCs in the first quarter of 2009.

Because it appeared that the Administrator was applying the cap to reduce funds available to ETCs but not including the ALLTEL/Verizon funds in the pool for distribution, Corr sought clarification from the Administrator as to how it was applying the cap. The Administrator replied with the attached February 25, 2009 letter which confirms the significant reduction in funding due to the cap and also expresses the Administrator's interpretation of the Verizon and

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<sup>3</sup> Ex Parte Letter from John Scott Submitted in Docket WT No. 08-95, November 3, 2008.

ALLTEL Merger Order.<sup>4</sup> The Administrator indicates that the Verizon and ALLTEL Merger Order "specifically states that the reduction in payments to Verizon and ALLTEL will not result in an increase in High Cost Support payments to other CETCs," citing Paragraph 196 of the Order. "All Verizon Wireless and ALLTEL High Cost support payments subject to the reduction provisions included in the Verizon Wireless and ALLTEL Merger Order are effectively removed from the CETC interim cap and do not "free up" additional dollars for other CETCs in any jurisdiction." This is directly contrary to the Commission's directive in the Interim Cap Order that the number of participants would not affect the amount of funds subject to the cap once it was set.

The Administrator's sole authority for its position is Paragraph 196 of the *Verizon Wireless-Alltel Merger Order*. That Paragraph does not in any way indicate that the funding disclaimed by Verizon/ALLTEL is not to go back into the capped pool. Rather, the Order states: "With regard to this phase down of competitive ETC high cost support, Verizon Wireless states its understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs ...." The subject is discussed nowhere else in the Order. Nowhere did the Commission consider, much less adopt, Verizon's "understanding" of what would happen to the freed up funds. Surely a unilateral and self-serving understanding voiced by a party to a contested proceeding cannot, sub silentio, become the governing policy of an administrative agency. We cannot imagine how the Administrator has gotten the impression that the Order "specifically states" that the reduction of the Verizon/ALLTEL money will not result in an increase to other CETCs; it plainly and indisputably states no such thing.

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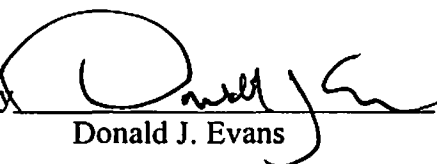
<sup>4</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258, ¶¶ 196-197 (rel. Nov. 10, 2008) ("*Verizon Wireless-Alltel Merger Order*").

The Administrator's error is especially grievous since it seems to have taken an oblique reference in an Order applicable solely to two particular entities and used that language to override the formally adopted policy of the full Commission with respect to the cap formula. The *Interim Cap Order* expressly set the pool at the March 2008 level regardless of the number of participants, yet the Administrator has effectively obliged Verizon by reducing the March 2008 level without any authority from the Commission at all.

Relief Requested. Because the Administrator has erroneously given effect to what was nothing more than an assertion by Verizon in a merger proceeding instead of following the express directive of the Commission set forth in the *Interim Cap Order*, the Administrator should be directed to immediately include the high cost support that was received by ALLTEL and Verizon in the March 2008 funds calculation. Any other high cost support funds (such as those credited to Sprint or Nextel which are not now being claimed, should also be included in the pool of funds available for distribution under the cap. Those funds should then be distributed to ETCs as provided by the interim cap formula. The Administrator should make this distribution effective for all calendar quarters after December 31, 2008.

Respectfully submitted,

Corr Wireless Communications, LLC

By   
Donald J. Evans

Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0400

March 11, 2009

Its Attorney

## **CERTIFICATE OF SERVICE**

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the foregoing APPEAL FROM DECISION OF ADMINISTRATOR OF HIGH COST UNIVERSAL SERVICE FUND was sent by first class mail, postage prepaid, this 11<sup>th</sup> day of March, 2009, to the following:

High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, NW, Suite 200  
Washington, DC 20036



Deborah N. Lunt

February 25, 2009

*via U.S. Mail*

Mr. Donald J. Evans  
Fletcher, Heald & Hildreth, P.L.C  
11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street  
Arlington, VA 22209

RE: Re-Distribution of Alltel USF Funds

Dear Mr. Evans:

I am writing in response to your recent letter to Scott Barash, Acting Chief Executive Officer of USAC, dated January 27, 2009, regarding the significant decrease in Corr Wireless Communications, LLC's (Corr Wireless') High Cost support and the potential impact of the Verizon Wireless and Alltel merger on High Cost support.

Corr Wireless' significant decrease in High Cost support is a direct result of the Competitive Eligible Telecommunications Carrier (CETC) interim cap. With the implementation of the interim CETC cap, all CETCs experienced a twenty-seven percent (27%) reduction in Interstate Access Support (IAS) because of the creation of separate IAS pools for incumbent and competitive carriers. In addition to the IAS reduction, all CETCs in the state of Alabama experienced an estimated fifty-seven percent (57%) reduction in High Cost support in the first quarter 2009. This reduction in support is due to newly designated CETCs filing for High Cost support that were not eligible to receive support as of the established date of the interim cap baseline, i.e. the March 2008 High Cost support payments annualized.

The *Verizon Wireless and Alltel Merger Order*<sup>1</sup> includes no provisions for the redistribution of support to other CETCs. In fact, the *Order* specifically states that the reduction in payments to Verizon Wireless and Alltel will not result in an increase in High Cost Support payments to other CETCs.<sup>2</sup> All Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the *Verizon*

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<sup>1</sup> See *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC, For Consent to Transfer Control of Licenses, Authorization, and Spectrum manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, (Verizon Wireless an Alltel Merger Order)* FCC 08-258, (rel. November 10, 2008).

<sup>2</sup> See *Verizon Wireless and Alltel Merger Order* FCC 08-258, (rel. November 10, 2008), para. 196.

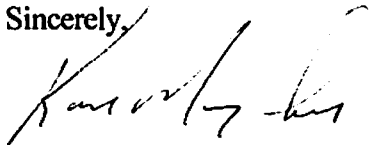


Mr. Donald J. Evans  
February 25, 2009  
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*Wireless and Alltel Merger Order* are effectively removed from the CETC interim cap and do not "free up" additional dollars for other CETCs in any jurisdiction.

If you have any additional questions, please feel free to contact me or someone on my High Cost staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Majcher", written over a horizontal line.

Karen Majcher  
Vice President  
High Cost and Low Income Division

cc: Scott Barash